

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



JUL 27 2005

The Honorable Jeb Bush
Governor of Florida
The Capitol
Tallahassee, Florida 32399-0001

Dear Governor Bush:

It is with pleasure that I respond to the State of Florida's request for waivers of statutory and regulatory requirements under the Workforce Investment Act (WIA). This action is taken under the Secretary's authority to waive certain requirements of WIA Title I, subtitles B and E and Sections 8-10 of the Wagner-Peyser Act. In the Strategic State Plan for Title I of the Workforce Investment Act and the Wagner-Peyser Act for the two-year period, July 1, 2005, through June 30, 2007, the state submitted fourteen waiver requests. The following is the disposition of the state's waiver submission (copy enclosed).

Requested Waiver 1: Extension of the waiver of the provisions of WIA Sections 133(c)(2) and 128(c)(2), and 20 CFR 667.160, to permit a mid-year de-obligation and reallocation of local area funds based on obligations and expenditures.

The state indicates that this extension will continue to ensure maximum use of funds, promote more effective and integrated service delivery, and improve administrative efficiencies. The request is written in the format identified in WIA Section 189(i)(4)(B) and 20 CFR 661.420(c), and appears to meet the standard for approval at 20 CFR 661.420(e). Accordingly, we are approving an extension of this waiver, through June 30, 2007.

Requested Waiver 2: Waiver to permit 100 percent transfer of funds between Adult and Dislocated Worker funding streams.

This waiver request for funds transferability is consistent with one of the improvements that the Administration is seeking in the reauthorization of the Workforce Investment Act—the consolidation of the WIA Adult, WIA Dislocated Worker and Wagner-Peyser Act (Employment Service) funding streams. The request is written in the format identified in WIA Section 189(i)(4)(B) and 20 CFR 661.420(c), and appears to meet the standard for approval at 20 CFR 661.420(e). Accordingly, the State of Florida is granted a waiver of the funds transfer limitation at WIA Section 133(b)(4), through June 30, 2007. The waiver allows the state to approve local area requests to transfer up to 100 percent of local area allocations between the WIA Adult and Dislocated Worker programs.

Requested Waiver 3: Waiver to allow services funded by Wagner-Peyser dollars to be provided with local staff not on state “merit-system” payroll, or to allow demonstration project status.

The WIA general waiver authority is limited to the statutory and regulatory provisions of WIA Title I, subtitles B and E and Sections 8-10 of the Wagner-Peyser Act. The requirement that Wagner-Peyser Act services be provided by state merit staff employees derives from Sections 3 and 5(b)(1) of the Wagner-Peyser Act and the Secretary’s interpretation of the application of those sections. Accordingly, we do not have authority to grant a waiver of this requirement.

Requested Waiver 4: Waiver of the 30 percent expenditure mandate for out-of-school youth at WIA Section 129(c)(4)(A) and 20 CFR 664.320.

The state is seeking this waiver to enable local areas to better serve the state’s disadvantaged, in-school youth population. In Training and Employment Guidance Letter 12-01, Attachment B, we noted that states experiencing difficulty in meeting the 30 percent expenditure requirement could consider requesting a waiver to modify the definition of out-of-school youth. In this request, the state did not cite any problems in meeting this requirement. In a discussion with Mike Switzer, Vice President of Workforce Florida, and his staff on this request, and a related request below, we confirmed that the state was not having difficulty meeting the expenditure requirement. Accordingly, we are not approving the state’s request. As you know, improved service to out-of-school youth is central to ETA’s new youth vision. We support the state’s efforts to provide high-quality services to youth, and we believe the current requirements provide an effective framework for meeting this goal.

Requested Waiver 5: Waiver to minimize data capture requirements for individuals trained using state level or local funds to provide Incumbent Worker Training or Employed Worker Training based on employer application, rather than individual trainee eligibility.

Additional information is needed to complete our review of this request. ETA’s Atlanta Regional Office is working with your state workforce agency staff to get clarification on the barriers the state wishes to address through this request, and the goals it seeks to accomplish. Once we receive this information, we will review the request using the established waiver procedures and respond to the state accordingly.

Requested Waiver 6: Waiver to allow 20 percent of local Adult and Dislocated Worker formula funds and 20 percent of state-level rapid response funds to be expended on incumbent worker training.

This waiver request, like the funds transfer request addressed above, is consistent with one of the improvements that the Administration is seeking in the reauthorization of the Workforce Investment Act—the consolidation of the WIA Adult, WIA Dislocated Worker and Wagner-Peyser Act (Employment Service) funding streams. The request is written in the format identified in WIA Section 189(i)(4)(B) and 20 CFR 661.420(c), and appears to meet the standard for approval at 20 CFR 661.420(e). Accordingly, the state is granted a waiver of the language that limits the authority to provide the activities identified in WIA Section 134 to the state. This waiver will permit local areas to request the use of up to 20 percent of local area formula allocation funds for adults and dislocated workers to provide statewide employment and training activities identified at WIA Section 134(a)(3), through June 30, 2007.

We are also granting a waiver of the language limiting the authority to provide the activities at WIA Section 134(a)(1)(B) to statewide reserve funds. This waiver permits the use of up to 20 percent of the funds reserved for rapid response activities at WIA Section 133(a)(2), to provide the statewide activities authorized at WIA Section 134(a)(3)(A), with the exception of administration, at WIA Section 134(a)(3)(A)(i), through June 30, 2007.

Requested Waiver 7: Waiver to allow the use of Individual Training Accounts (ITAs) for older youth without requiring dual enrollment as WIA Adults.

The state indicates that the waiver will offer flexibility in using youth funds to provide training services to youth while retaining limited adult funds to be used on adult training services. The request further states that the waiver will allow local areas to enhance the delivery of occupational skills training and increase customer choice for youth. This request is written in the format identified in WIA Section 189(i)(4)(B) and 20 CFR 661.420(c), and appears to meet the standard for approval at 20 CFR 661.420(e). Accordingly, the state is granted a waiver of the prohibition on the use of ITAs for youth at 20 CFR 664.510, through June 30, 2007. This waiver permits the state to use ITAs for older youth without requiring enrollment in the WIA Adult program. The state should ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth.

Requested Waiver 8 and 9: Waiver to permit Local Veterans' Employment Representatives (LVER) and Disabled Veterans' Outreach Program (DVOP) staff to be fully integrated into one-stop functional service delivery to universal customers and allow part-time staff to charge against Veterans' funds based on time needed.

These are requests to waive Title 38, United States Code, Chapters 41 and 42, as amended by Public Law 107-288 (Jobs for Veterans Act) and the Special Grant Provisions of the Jobs for Veterans Act. The general waiver authority does not cover the statute or requirements cited in these requests. This request has been forwarded to the

Department of Labor, Veterans' Employment and Training Service for review to determine whether any flexibility is available to help the state meet its goals.

Requested Waiver 10: Waiver to allow alternative cost allocation planning and charging based on funding availability factors.

Additional information is needed to complete our review of this request. ETA's Atlanta Regional Office is working with your state workforce agency staff to get clarification on the barriers the state wishes to address through this request, and the goals it seeks to accomplish. Once we receive this information, we will review the request using the established waiver procedures and respond to the state accordingly.

Requested Waiver 11: Waiver to allow entrepreneurial training to be provided through state-level grants and local formula dollars with performance tracked and aggregated at the state level, but not included in local performance calculations.

The request indicates that many of Florida's regional workforce boards refer individuals interested in starting their own businesses to providers of entrepreneurial training, but do not sponsor or fund such training, partly due to the restrictions about what is currently considered a positive performance outcome. This request is written in the format identified in WIA Section 189(i)(4)(B) and 20 CFR 661.420(c), and appears to meet the standard for approval at 20 CFR 661.420(e). We have encouraged the workforce investment system to make entrepreneurial training opportunities available for people interested in self-employment, and we are aware of the unique challenges that states face in moving forward with this effort. Accordingly, we are granting a waiver of 20 CFR 666.300, to be applied solely to individuals who receive entrepreneurial training with WIA formula funds. This will allow the state to exclude these individuals from local performance calculations.

Under this waiver, we expect to continue to receive from the state the following reports for WIA: 1) quarterly reports; 2) the Annual Report (including the Local Table O's); and 3) the WIASRD (individual exit records). The performance measures for which the state will be held accountable for the Adult and Dislocated Worker programs are: 1) entered employment rate; 2) employment retention rate; 3) earnings change; and 4) employment and credential rate. The state will report against these performance measures for all individuals served with formula funds, including those who receive entrepreneurial training.

The state can use supplemental data to report performance outcomes for the entered employment, employment retention and employment and credential rates (TEGL 28-04 and TEGL 7-99). The earnings change measure is the only measure which requires use of wage records only for reporting performance outcomes. Individuals whose employment in either the first or third quarter after the exit quarter was determined from supplementary sources and not from wage records are excluded from the

measure. Wage records include UI wage records, as well as other automated, employment and administrative data bases, such as state government employment records, the state New Hires registry, and state Department of Revenue data. For a complete list of other acceptable wage records, see TEGL 28-04, Section 6. In addition, since the definition of the credential measure includes “of those who received training,” ETA expects that the state will include those individuals who received entrepreneurial training in this measure when reporting it at the state level.

Requested Waiver 12: Waiver to allow services to the neediest youth with barriers to be excluded from the calculation of performance outcomes.

The state’s request does not meet the higher standard for waiving the key WIA reform principle of increased accountability at 20 CFR 661.410(c). Accordingly, we cannot approve this request. There is a mechanism in place to address the state’s concerns without the need for a waiver. Provisions for negotiation and renegotiation of performance levels allow states to consider such factors as the characteristics of participants. We provided specific guidance in Training and Employment Guidance Letter 27-04, saying that, if a state is serving a large number of youth that fall into the category of neediest youth, this may be taken into account in the negotiation of performance measures.

Requested Waiver 13: Waiver to include expenditures on services for disadvantaged youth in calculating the required percentage expenditure mandated for out-of-school youth, regardless of whether such youth are in-school at the time of their enrollment in WIA youth funded activities.

The state would like to be able to include expenditures on services to several populations of youth in need in calculating the required percentage expenditure for out-of-school youth, regardless of their school status. These include homeless youth, migrant and seasonal farmworker youth, youth in foster care, youth aging out of foster care, and youthful offenders, among others. This request is similar to the request to waive the 30 percent expenditure requirement for out-of-school youth, addressed above.

We noted above that states experiencing difficulty in meeting the 30 percent expenditure requirement could consider requesting a waiver to modify the definition of out-of-school youth. Our data show, and the state confirmed, that the state is not having any difficulty meeting this requirement. Accordingly, we are not approving this request. Improved service to out-of-school youth is central to ETA’s new youth vision. We support Florida’s efforts to provide high-quality services to youth, and we believe the current requirements provide an effective framework for meeting this goal.

Requested Waiver 14: Waiver to allow one-stop center staff funded by WIA or Wagner-Peyser funds to perform participant intake and eligibility determination for other supportive workforce programs.

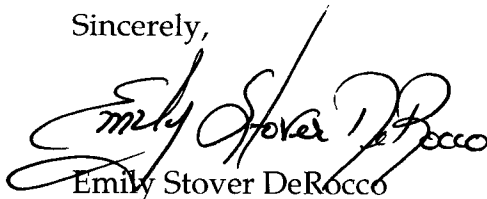
The state is requesting a waiver to allow one-stop center staff to perform participant intake and eligibility determination for other supportive workforce programs such as Temporary Assistance for Needy Families (TANF), Food Stamp Employment and Training (FSET), and Medicaid, without having to cost allocate staff time for each respective program. In two supplemental submissions, the state explained that it is not seeking to support the costs of operating a partner's program with WIA funds, but rather, is looking to enhance the capacity of one-stop centers to provide integrated and seamless services to customers. The state also indicated that, while applications for the partner programs cited above can be submitted by phone or computer, customers often need one-stop staff assistance in using on-line applications, faxes, and phones, and in verification of identity.

The request is written in the format identified in WIA Section 189(i)(4)(B) and 20 CFR 661.420(c), and appears to meet the standard for approval at 20 CFR 661.420(e). Accordingly, the state is granted a waiver of 20 CFR 662.240(b)(10) to interpret this section as inclusive of the three supportive workforce programs cited by the state. The waiver allows one-stop center staff to perform intake and eligibility determination for the Temporary Assistance for Needy Families (TANF), Food Stamp Employment and Training (FSET), and Medicaid programs. Under the waiver, these activities are considered to be WIA core services and can be paid for with WIA funds. There is no need to allocate back to the other programs and no need for reimbursement. The waiver is granted through June 30, 2007.

As provided for under paragraph 3 of the executed Agreement, the approved waivers are incorporated by reference into the state's WIA Grant Agreement. A copy of this letter should be filed with the state's WIA Grant Agreement and the state's Strategic Plan, as appropriate.

We look forward to continuing our partnership with you and achieving better workforce investment outcomes. We are prepared to entertain other state and local level waiver requests that you may wish to submit, consistent with the provisions of the WIA statute and regulations.

Sincerely,



Emily Stover DeRocco

Enclosure